

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

MIDAMERICAN ENERGY COMPANY, )  
NICOR ENERGY, L.L.C., )  
AES NEW ENERGY, INC., AND THE )  
NATIONAL ENERGY MARKETERS )  
ASSOCIATION )

Case No. 02-0290

Request for Expedited Rulemaking Regarding )  
Telephonic and Internet Enrollment Procedures )  
Consistent with § 2EE of the Consumer Fraud and )  
Deceptive Business Practices Act. )

**INITIAL COMMENTS OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by James E. Ryan, Attorney General of the State of Illinois, (“the People”) file initial comments in the above proceeding. On April 30, 2002, the above alternative retail energy suppliers (“ARES”) and marketing association filed proposed rules for enrolling electricity customers to change their electricity supply. These proposed rules were bifurcated into telephonic and internet enrollment rules.

Because the General Assembly has not authorized the Illinois Commerce Commission to promulgate telephonic enrollment rules for Illinois electricity customers, the People will not address those rules in these comments. The People’s legal arguments in support of this position will be filed as part of its response to the Illinois Commerce Commission’s Motion to Dismiss. Specifically, that response will address how, under state and federal law, a recording of a Customer’s telephonic authorization to change electric providers cannot satisfy the requirements of 815 ILCS 505/2EE. The People will further address how the fact that telephonic enrollment is not contemplated by Section 2EE necessarily prevents Section 16-115A of the Public Utility Act from authorizing a telephonic enrollment rulemaking.

Section 2EE of the Consumer Fraud Act requires that any party wishing to switch an

electricity customer to a new supplier must secure a signed and dated Letter of Authority (“LOA”). 815 ILCS 505/2EE. Under both the Illinois Electronic Commerce and Security Act (“ECSA”), 5 ILCS 175/1 *et seq.*, and the federal Electronic Signatures in Global and National Commerce Act (“E-Sign”), 15 USCS § 7001 *et seq.*, an electronically signed LOA may be used in the place of an LOA authorized by a physical or “wet” signature. However, this alternative method of certification of a document requires that the rules regarding this method minimize any potential for fraud. Put another way, these rules should ensure that an electronically signed LOA is as unique to the customer as his or her signature. Further, given the amount of information needed to supplement the understanding of this task, and the fact that workshops on these issues have been mandated in the Delivery Service Tariff dockets, the Commission should reschedule any further comments until after the parties have addressed these fundamental issues in a workshop setting. It is in view of this purpose, along with the other requirements of Section 2EE, that the People evaluate the proposed internet enrollment rules.

## **I. Proposed Internet Enrollment Rules**

The proposed internet enrollment rules consist of a definitions section and an internet enrollments section. The internet enrollment section is then divided into an authorization section, a minimum information section and record retention section. The People will address the deficiencies of both of these sections below.

### **A. Section 1**

Given that the major difference between internet enrollment and the standard LOA set out in Section 2EE is the nature of an electronic signature, the People’s paramount concern is how

the proposed rules define and circumscribe an electronic signature. A handwritten signature is unique to the signer. An electronic signature should also be unique to the signer. Black's Law Dictionary defines a digital signature as "[a] secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender." Black's Law Dictionary 7<sup>th</sup> Edition at 1387. Any rule for internet enrollment should set up requirements to ensure that the electronic signature is unique to the signer. The proposed rule does not do this.

The short shrift paid by the proposed rule to this issue is problematic. The proposed rule merely states "[f]or all Internet Enrollments, authorization to switch electric service providers shall be *obtained by encrypted customer input* on a provider's website." Exhibit B (emphasis added). Internet enrollment is defined to mean "any electronic record of a Customer's authorization to change electric service providers, which satisfies the disclosure requirements of the Letter of Authority prescribed in 815 ILCS 505/2EE." Exhibit B. Yet, the proposed rule does not address how the electronic record is generated. Nowhere in the proposed rule is the meaning of the phrase "obtained by encrypted customer input" defined. This phrase must be defined in Section 1. The notion of encryption is positive. However, a lot more information regarding the methods and criteria for such encryption must be produced for evaluation.

## **B. Section 2(a)**

Section 2(a) of the proposed rules offers no explanation or guidelines regarding how electronic signatures will be generated, and no criteria by which to judge such procedures. The only explanation of "obtained by encrypted customer input" is not found in the proposed rules. Rather, the Petition text itself refers to an "encrypted password or other customer identification key known only by that customer." Petition at 12. It is unclear, however, how a customer would

have such a password or key prior to having a pre-existing relationship with the marketer, by which they could set up such a password or key. The fact that this petition for rulemaking has been offered as a method to enroll new customers, if possible by a single contact, implies that the petitioners have envisioned a single contact method of verification. This could require a potential customer to both register for a password and enter a contract in a single visit to the website, which could invite fraud. For example, if a password is required to verify a ratepayer's identity, any one might be able to visit the provider's website, and register for a password in someone else's (Ratepayer A) name. That same person could then use that new password to authorize a change in Ratepayer A's electric service, all without Ratepayer A's knowledge or assent. While other procedures may prevent that kind of abuse,<sup>1</sup> the proposed rules, as now set out, do not ensure such procedures.

Alternatively, a supplier could require a more universal key such as credit card information. This method would allow for an established method of authorization through a single contact with the provider's website. However, this may also lead to customers unwittingly being signed up for direct debit payments for their electric service. For these reasons, the question of encrypted or secure authorization needs to be more fully explored, and the rule itself should provide a definition of "encrypted customer input."

### **C. Section 2(b)**

Section 2(b) of the proposed internet enrollment rules sets out what the enrollment website shall at a minimum provide. This list does not include all of the specifically enumerated

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<sup>1</sup>A registration procedure that sends a password to a existing registered e-mail account of Ratepayer A may address this issue.

requirements of Section 2EE. 815 ILCS 505/2EE(5)(i&iv). The terms and conditions set out in Section 2(b)(xi) must include:

1. The Subscriber's billing name and address;
2. That the subscriber understands that any electric service provider selection that the subscriber chooses may involve a charge to the subscriber for changing the subscriber's electric service provider.

In addition, "[t]he terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed." 815 ILCS 505/2EE(5)(iii). Accordingly, Section 2(b)(xi) should also contain the following:

3. A complete description of each service being provided;
4. By what means any future correspondence will be sent;
5. That the customer may opt to receive a written copy of the contract;
6. Whether the customer will receive a bill from both the ARES and the electric utility, or receive a single combined bill.

Further, as Section 2EE requires that the Letter of Authority ("LOA") be a separate document devoid of inducements, the website displaying this information should be a separate screen devoid of inducements of any kind. 815 ILCS 505/2EE(2&3).

### **C. Section 2(c)**

This section refers to the RES's obligation to retain the electronically signed LOA's for a period of at least two years, and to produce a copy upon request of the ICC, its Staff and the Customer's LDC. These provisions beg the question of how, if fraud is later alleged, a properly executed electronic LOA will be produced and its authenticity verified. Put another way, where a ratepayer claims that his electric supply service was changed without his consent, the proposed

rule does not explain how an electronically signed LOA will be used to prove consent. Can one verify an electronic signature by simply looking at the electronic form or printed text, or must some process be employed to verify the signature? More information is needed regarding this issue.

## **Conclusion**

Three of the proposed rules' four subsections require greater information from the petitioners to address the People's concerns. For the most part, these proposed rules simply do not address the paramount question of how an electronic signature will uniquely identify and authenticate the signer and what requirements must be put upon suppliers to ensure this. Given the amount of information needed to supplement the understanding of this task, and the fact that workshops on these issues have been mandated in the Delivery Service Tariff dockets, the People request that the Commission reschedule any further comments until after the parties have addressed these fundamental issues in a workshop setting.

Respectfully submitted,  
People of the State of Illinois James E. Ryan  
Attorney General of Illinois

Dated: June 3, 2002

By: \_\_\_\_\_  
One of his attorneys

Mark G. Kaminski  
Asst. Unit Supervisor  
Consumer Utilities Unit/Public Utilities Bureau  
100 West Randolph Street  
12<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-8326